

Gregory Sheets d/b/a Tri-Parish Electric, Inc. and International Brotherhood of Electrical Workers Local Union No. 995, AFL-CIO. Cases 15-CA-13308 and 15-CA-13331

April 20, 1998

DECISION AND ORDER

BY MEMBERS FOX, HURTGEN, AND BRAME

Upon a charge and an amended charge filed by the Union on July 13 and 21, 1995, respectively in Case 15-CA-13308, and upon a charge filed by the Union on July 24, 1995, in Case 15-CA-13331, the General Counsel of the National Labor Relations Board issued a consolidated complaint on August 31, 1995, against Gregory Sheets d/b/a Tri-Parish Electric, Inc., the Respondent, alleging that it has violated Section 8(a)(1), (3), and (4) of the Act. On September 13, 1995, an undated, unsigned document labeled "Answers to Complaint by Number and Paragraph" (the answer) was received by the Regional Director for Region 15. On September 18, 1995, the General Counsel issued an amended complaint alleging violations of the same sections of the Act. Although properly served copies of the amended complaint, the Respondent failed to file an answer.

On June 6, 1996, the General Counsel filed with Associate Administrative Law Judge William N. Cates an unopposed motion to strike the Respondent's September 13 "answer," to issue a decision on the pleadings, and, alternatively, to postpone the hearing indefinitely. On June 7, 1996, Judge Cates granted the General Counsel's motion to postpone the hearing indefinitely.¹

On October 28, 1997, the General Counsel filed with the Board a Motion for Summary Judgment. On October 30, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days of service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint

will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by letter dated June 3, 1996, notified the Respondent that unless a proper answer were filed by June 6, 1996, she would move to strike the "answer" and to enter judgment by default as to all the allegations in the amended complaint.

We grant the General Counsel's renewed motion to strike the unsigned "answer." *McElroy Electric Co.*, 297 NLRB 765 (1990). In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has done business as a sole proprietor with an office and place of business in Livingston, Louisiana, where it has been engaged as an electrical contractor in the building and construction industry. During the 12-month period ending July 31, 1995, the Respondent, in conducting this business operation, has purchased and received at its facility goods valued in excess of \$50,000 from other enterprises located within the State of Louisiana, each of which had received these goods directly from points outside the State of Louisiana. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. 8(a)(1) Allegations

At the Respondent's Lowes jobsite in Baton Rouge, Louisiana, the Respondent's owner, Gregory Sheets (1) about May 23, 1995, (a) threatened employees by informing them that the Respondent would not allow an employee to apply for work, or would not hire that employee, because the Union had filed unfair labor practice charges on behalf of that employee against the Respondent; (b) threatened its employees with arrest because they aided or assisted the Union; (2) about May 30, 1995, (a) interrogated employees about their union membership, activities, and sympathies; and (b) informed an employee that the reason that the Respondent had put a question on its job application form asking about employees' membership in organizations or trade schools was to avoid hiring employees who joined, formed, or supported the Union; (3) about July 18, 1995, promulgated and maintained a rule prohibiting union solicitation during working time; (4) about July 18, 1995, (a) threatened the Respondent's employ-

¹ Judge Cates did not pass on the General Counsel's other motions, "allow[ing] Counsel for the General Counsel to file what, if any, motions she may deem appropriate with the National Labor Relations Board."

ees with stricter scrutiny of their work because the employees had joined, formed, and assisted the Union; (b) threatened the Respondent's employees with denial of overtime because they had joined, formed, and assisted the Union; (c) threatened union organizers in the presence of employees; and (d) interrogated its employees about their union membership, activities, and sympathies; and (5) about July 19, 1995, (a) threatened the Respondent's employees with stricter scrutiny of their work because they had joined, formed, and assisted the Union; (b) threatened the Respondent's employees with denial of overtime because they had joined, formed, or assisted the Union; and (c) threatened the Respondent's employees with plant closure if they selected the Union as their bargaining representative.

About July 11, 1995, the Respondent changed its hiring procedure by refusing to accept job applications that had been photocopied.

B. 8(a)(3) and (1) Allegations

About March 1995, the Respondent changed its job application form and changed its application policies by refusing to consider applications submitted more than 30 days prior to the hire date.

About July 14, 1995, the Respondent's owner and supervisor, Gregory Sheets, enforced these application rules selectively and disparately by failing to apply them to employees who refrained from joining, forming, or aiding the Union.

About July 7, 1994, the Respondent refused to accept job application forms from applicants Richard N. Bailey, Kendrick E. Russell, Charles Thomasee Jr., Randell K. Roshto, and Billy C. Stiles because they had formed, joined, or assisted the Union and had engaged in concerted activities.

About July 11, 1995, the Respondent refused to consider for employment or to employ Leslie G. Carter, Kendrick E. Russell, Jimmy Hudson, and Charles Thomasee Jr., because they had formed, joined, or assisted the Union and had engaged in concerted activities.

Between about July 19 and 31, 1995, the Respondent has refused to allow Kevin Evans to work overtime because he had formed, joined, or assisted the Union and had engaged in concerted activities.

C. 8(a)(1), (3), and (4) Allegations

Since about May 23, 1995, the Respondent refused to accept a job application from applicant Michael Clary or has refused to consider to hire him because he had formed, joined, or assisted the Union and had engaged in concerted activities, to discourage employees from engaging in these activities, and because he had given an affidavit in support of the charge filed in Case 15-CA-13031 and was named as a discriminatee in that charge.

CONCLUSIONS OF LAW

1. By the acts and conduct described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) of the Act.

2. By the promulgation and enforcement of changes in its job application form and application policies described above to discourage its employees from joining or assisting the Union or engaging in other protected activities, by changing its hiring procedure by refusing to accept applications which have been photocopied, and by refusing to accept applications from, to consider for employment or to employ job applicants, and refusing to grant overtime to an employee, the Respondent has also discriminated in regard to the hire or tenure or terms and conditions of employment of its employees and employee applicants, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) of the Act.

3. By refusing to accept a job application from Michael Clary or to consider hiring him because he had given an affidavit in support of an unfair labor practice charge in Case 15-CA-13031 and was named as an alleged discriminatee in that charge, the Respondent has discriminated against him for filing charges or giving testimony under the Act in violation of Section 8(a)(4) of the Act.

4. The Respondent's unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by changes in its job application form and application policies and changes in its hiring procedure, we shall order the Respondent to rescind those changes. Having found that the Respondent has unlawfully refused to accept applications from job applicants Richard N. Bailey, Kendrick E. Russell, Charles Thomasee Jr., Randell K. Roshto, and Billy C. Stiles and has refused to accept an application from or consider for hire job applicant Michael Clary, we shall order it to, on request, provide job applications to them.² Having found that the Respondent unlawfully refused to consider for employment, or to employ, job applicants Leslie G. Carter, Kendrick E. Russell,

² See *Lancet Arch, Inc.*, 324 NLRB No. 28 (Aug. 8, 1997).

Jimmy Judson, and Charles Thomasee Jr., we shall order it to consider for employment or to employ them,³ and to make them whole for any loss of earnings that they may have suffered by reason of the Respondent's discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Having found that the Respondent discriminatorily refused to allow Kevin Evans to work overtime, we shall order that he be made whole with backpay computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), plus interest as set forth in *New Horizons*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Gregory Sheets d/b/a Tri-Parish Electric, Inc., Livingston, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening not to allow applicants to apply for work or not to hire those applicants because the Union has filed unfair labor practice charges on their behalf.

(b) Threatening employees with arrest because of their union activities.

(c) Interrogating employees about their union membership, activities, and sympathies.

(d) Informing employees that the reason for a question on the job application form asking about employee membership in organizations or trade schools was to avoid hiring employees who had engaged in union activities.

(e) Promulgating and maintaining rules prohibiting union solicitation during working time.

(f) Threatening employees with stricter scrutiny of their work because of their union activities.

(g) Threatening to deny overtime to employees because of their union activities.

(h) Threatening union organizers in the presence of employees.

(i) Threatening employees with plant closure because they selected the Union as their bargaining representative.

(j) Changing the hiring procedure by refusing to accept job applications that have been photocopied.

(k) Changing the job application form and changing job application policies by refusing to consider applications submitted more than 30 days prior to the hire date.

(l) Selectively and disparately enforcing new job application rules by failing to apply them to employees who refrain from union activity.

(m) Refusing to accept job application forms from, consider for employment, or to employ job applicants because of their union activities or because they have given testimony supporting charges filed with the Board or because they have been named in those charges.

(n) Refusing to allow employees to work overtime because of their union activities.

(o) In any like or related manner interfering with, restraining, or coercing you in the exercise of the rights guaranteed you by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, provide job application forms to Michael Clary, Richard N. Bailey, Kendrick E. Russell, Charles Thomasee Jr., Randell K. Roshto, and Billy C. Stiles.

(b) Make job applicants Leslie G. Carter, Kendrick E. Russell, Jimmy Hudson, and Charles Thomasee Jr., and employee Kevin Evans whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Livingston, Louisiana, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has, as the General Counsel asserts, gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees, former employees, and job applicants who have applied for jobs with the Respondent at any time since July 7, 1994.

³ The General Counsel has stated that the Respondent is currently out of business. Accordingly, resolution of the affirmative provisions of this Order relating to hiring is left to the compliance stage of the proceeding.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice. Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten not to allow employees to apply for work or not to hire those employees because the Union has filed unfair labor practice charges against us on their behalf.

WE WILL NOT threaten employees with arrest because of their union activities.

WE WILL NOT interrogate employees about their union membership, activities, and sympathies.

WE WILL NOT inform employees that the reason for a question on the job application form asking about membership in organizations or trade schools was to avoid hiring employees who had engaged in union activities.

WE WILL NOT promulgate and maintain rules prohibiting union solicitation during working time.

WE WILL NOT threaten employees with stricter scrutiny because of their union activities.

WE WILL NOT threaten to deny overtime to employees because of their union activities.

WE WILL NOT threaten union organizers in the presence of employees.

WE WILL NOT threaten employees with plant closure because they selected the Union as their bargaining representative.

WE WILL NOT change the hiring procedure by refusing to accept job applications that have been photocopied.

WE WILL NOT change the job application form and WE WILL NOT change job application policies by refusing to consider applications submitted more than 30 days prior to the hire date.

WE WILL NOT selectively and disparately enforce new job application rules by failing to apply them to employees who refrain from union activity.

WE WILL NOT refuse to accept job application forms from, consider for employment, or to employ job applicants because of their union activities or because they have given testimony supporting charges filed with the National Labor Relations Board or because they have been named in those charges.

WE WILL NOT refuse to allow employees to work overtime because of their union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, provide job application forms to Michael Clary, Richard N. Bailey, Kendrick E. Russell, Charles Thomasee Jr., Randell K. Roshto, and Billy C. Stiles.

WE WILL consider for employment or employ Leslie G. Carter, Kendrick E. Russell, Jimmy Hudson, and Charles Thomasee Jr., and WE WILL make them and Kevin Evans whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against them.

GREGORY SHEETS D/B/A TRI-PARISH
ELECTRIC, INC.